

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Petition of Western Massachusetts Electric
Company for Approval by the Department of
Telecommunications and Energy to Divest Specific D.T.E. 99-74
Non-Nuclear Generating Facilities

Hearing Officer's Ruling on Motion for Protective Treatment filed by
Operations Management Analysis Unit and J.P.Morgan Securities, Inc.

I. INTRODUCTION

On December 22, 1999, the Connecticut Department of Public Utility Control, through its specially designated Utility Operations Management Analysis unit ("UOMA"), and J.P. Morgan Securities, Inc. ("J.P. Morgan") [collectively, "Participants"], both limited participants in the above-referenced docket, requested approval by the Department of Telecommunications and Energy ("Department") of a Motion for Protected Treatment ("Motion") of specific discovery responses and testimony. The discovery and testimony was submitted concerning the Department's investigation of Western Massachusetts Electric Company's ("WMECo") divestiture of specific generating assets to its affiliate, Northeast Generation Company. This matter has been docketed as D.T.E. 99-74.

Also, on December 22, 1999, the Attorney General of the Commonwealth indicated that he would not object to the Motion (Attorney General Letter, December 22, 1999).

II. POSITIONS OF UOMA and J.P. MORGAN

The Participants state that the discovery responses and testimony in question contains trade secrets, confidential, competitively sensitive or other proprietary information regarding the bid process that led to the proposed sale of WMECo's assets (Motion at 2, 9). Specifically, the Participants state that the documents contain, among other things, the identity of the bidders, their business strategies, and information about how bids fared in comparison with each other (id. at 9-10).

Further, the Participants state that maintaining the confidential status of these documents is necessary to maximize asset value in future auctions (id.). The Participants suggest that disclosure of bidders' business strategies would completely contradict the goal of encouraging robust participation in future auctions which is essential to maximizing asset value and reducing stranded costs (id.).

III. STANDARD OF REVIEW

General Law c. 25, § 5D provides that the Department may protect from public disclosure trade secrets, confidential, competitively sensitive or other proprietary information provided in the course of proceedings before the Department. Section 5D also states that

"[t]here shall be a presumption that the information for which such protection is sought is public information and the burden shall be upon the proponent of such protection to prove the need for such protection." Thus, the burden on the company is to establish the need for protection of the information cited by the company. In determining the existence and extent of such a need, the Department must consider the presumption in favor of disclosure and the specific reasons that disclosure of the information benefits the public interest. The Berkshire Gas Company et al., D.P.U. 93-187/188/189/190, at 16 (1994).

IV. ANALYSIS AND FINDINGS

The Department has found that information regarding the specific bids that a company receives as part of the divestiture process is competitively sensitive and should be protected from public disclosure. Fitchburg Gas and Electric Light Company, D.T.E. 98-121 (1998). In Fitchburg, the Department stated that disclosure of information regarding the specific bids that were received could undermine a company's efforts to secure the highest bids in a divestiture process. Id. at 4. Moreover, the Department has stated that protecting information from public disclosure concerning specific bids would likely add value to a company's assets and increase its ability to negotiate higher prices when divesting other portions of its portfolio. Id.

In the instant matter, the Participants have demonstrated that the material for which they request protection from public disclosure contains the names of specific bidders, the amount bid, and how the bids compared with each other. In accordance with Department precedent, the Hearing Officer finds that this information contains trade secrets,

confidential, competitively sensitive or other proprietary information. Moreover, the Hearing Officer notes that maintaining the confidential status of this information would assist WMECo in future auctions to procure the highest bids, thereby maximizing the value of their assets.

Accordingly, the Participants' Motion is granted. The following exhibits will be protected from public disclosure.

AG 1-3;

AG 1-4;

AG 1-10(a);

AG 1-15;

AG 1-27;

AG 1-40(b)(c)(e);

AG 1-41(b);

AG 1-44(a)(b)(c)(e)(f)(g);

AG 1-51;

AG 1-52(a)(b);

AG 1-53;

AG 1-83;

AG 1-86(b);

AG 2-4;

AG 2-12;

AG 2-13(a)(b)(c);

AG 2-14;

AG 2-15;

AG 2-16;

AG 2-17;

DTE 1-24;

DTE 1-27;

DTE 1-29;

DTE 1-30;

Unredacted version of Paul Dabbar's supplemental direct testimony.

Any party to this proceeding (and UOMA and J.P. Morgan) may appeal this Hearing Officer's decision to the full Commission no later than January 14, 2000 at 5 p.m. Any appeal of this decision should be submitted to Mary L. Cottrell, Secretary of the Department, One South Station, Boston, MA 02110. A copy of this decision should be attached to any appeal.

Andrew O. Kaplan

Hearing Officer

Dated: January 11, 2000

cc: Mary L. Cottrell, Secretary

Service List, D.T.E. 99-74